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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Establishment of Fair Location
 Information Practices

WT Docket No. 01-72

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., an Entrepreneurs' Block PCS provider, hereby offers on behalf of itself and its Cricket subsidiaries (collectively "Leap"), these comments to the Commission's *Public Notice* in the above-referenced docket.¹ Leap believes that wireless location technology may allow for the development and delivery of services that provide real benefits to consumers. As with any nascent technology, however, there is a risk that misapplied regulations could stifle innovation and hamper the provision of valuable customer services.

Leap recognizes and applauds the central value of the Cellular Telecommunications and Internet Association's (CTIA's) petition: to assure wireless subscribers that location information will be collected and used in a manner they will find acceptable, while at the same time permitting carriers to develop new and beneficial location-based technologies.² While pursuing these goals, the Commission should be careful that it does not adopt a one-size

¹ Wireless Telecommunications Bureau Seeks Comment on Request to Commence Rulemaking to Establish Fair Location Information Practices, *Public Notice*, WT Dkt. No. 01-72 (rel. March 16, 2001) ("*Notice*").

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fits all solution that fails to account for the significant differences that exist (and will exist) among wireless plans and service offerings. Leap's Cricket service plan is one such offering that falls outside of the mold. Cricket provides consumers with a flat-rate plan providing unlimited local airtime that is prepaid one month at a time. Perhaps most important for these purposes, the Cricket business model differs from most other carriers in that a Cricket customer never signs a contract. Cricket customers purchase a "phone in a box" and while their use of the phone requires consent to certain specified terms and conditions, they never sign on a dotted line.³ The Commission should accommodate such varying service models in any rules it proposes or adopts.

The following four sections will discuss each principle of the CTIA petition in turn.

I. NOTICE

CTIA proposes that carriers provide notice to customers about specific location information collection and use practices prior to the disclosure or use of that information.⁴ Leap agrees that service providers should inform customers about their use of location information before disclosing that information to a third party. Leap also supports the suggestion that carriers should have flexibility in the means by which they inform customers about their location information practices.

² Petition of the Cellular Telecommunications Industry Association for a Rulemaking to Establish Fair Location Information Practices (filed November 22, 2000) ("*Petition*").

³ Therefore, any requirement that the provision of notice or the grant of customer consent be obtained in writing before the provision of services would be incongruent with Leap's business model. CTIA appears to share this concern in its petition by acknowledging that notice and consent can be provided in several ways. *Petition* at 9. Leap, however, wishes to underscore the importance of formulating regulations that are consistent with the business models of all market participants.

Leap is concerned, however, that any rule in this regard not be so broad as to encompass the mere collection of information, as opposed to its use. As stated earlier, the CTIA petition suggests that carriers provide *notice* of their data collection practices to customers *prior to the use* of that data.⁵ Yet, at the same time, the petition also suggests that carriers obtain *consent* from their customers *prior to the collection* of that same data.⁶ In other words, the CTIA appears to suggest that a carrier could be required to obtain consent to collect data from a customer at a point in time before that carrier is obligated to notify the customer that it is even collecting location data.⁷ While, in Leap's view, the CTIA appropriately limits a carrier's obligation to provide notice of data collection to the period prior to the use of that data, the rationale for the obligation they propose on carriers to obtain consent is not as clear. In fact, Leap believes that CTIA's principle of obtaining customer consent prior to any *collection* activity is at odds with the proposed principle that notice need be provided only prior to *disclosure* of such data to third parties, or its *use* for specific commercial purposes.

This concern is not idle hairsplitting: every carrier, including Leap, collects and uses customer location information for a variety of purposes generally related to network management. The Commission should be aware that certain regulations could make it more difficult for carriers to collect and make use of this information in order better to serve their customers. Moreover, as better and more accurate location information becomes available, the Commission's rules should allow carriers to collect and use this information for the same basic network- and service enhancing ends. Any rule proposed or adopted by the Commission should

⁴ *Petition* at 9.

⁵ *Id.*

⁶ *Id.*

be careful to allow carriers to continue using location-based information to improve and enhance their networks.

II. CONSENT

In addition to notice, CTIA appears to propose that carriers obtain consumers' consent prior to any information collection or use.⁸ Leap agrees that consent should be obtained before certain *uses*. However, just as the Commission should not obligate a carrier to provide notice of mere information collection, nor should it require prior customer consent for the same activity.

Current statutory requirements may support imposing a duty on the carrier to obtain consent prior the use or disclosure of location information, but there appears to be no statutory basis for imposing a duty on carriers to obtain consent prior to the collection of that information.⁹ Under the Communications Act, a carrier may provide location-based services to a customer so long as the call “was initiated by the customer and the customer *approves of the use* of such information.”¹⁰ In contrast, the statute places no limitations on the act of data collection itself. In fact, the Communications Act specifically allows disclosure and use of data for a variety of specified purposes.¹¹ There appears to be no basis for requiring customer consent for the mere act of collecting data.

⁷ For example, this appears to be the case for a carrier that only collects, but does not intend to use or disclose location information.

⁸ *Petition* at 9.

⁹ 47 U.S.C. § 222(c)(1)

¹⁰ 47 U.S.C. § 222(d)(3) (emphasis added).

¹¹ *E.g.* 47 U.S.C. § 222(d)(1) (allowing carriers to use or disclose data to initiate, render, bill and collect for telecommunications services). CTIA notes these exceptions in its petition. *Petition* at 9 n.12.

Requiring a carrier to obtain prior consents from all customers prior to data collection might be impractical from an operational perspective. For example, an information gathering system might track all customers, and be unable to deactivate information collection for a particular customer.¹² Likewise, depending on the form of consent that is required, an obligation to obtain consent prior to information collection could prove unwieldy in its administration. Unlike most carriers, under the Cricket service plan, Leap is not in the position to obtain consent in a contract that is signed by the customer prior to the initiation of service. Other means of obtaining consent prior to information collection could add significant back-office costs to carriers, potentially pricing some consumers out of the market for wireless services. Any such increase in costs (and prices) could have particular significance for Cricket customers, who tend to be lower-income, and highly price-sensitive.

Where consent is required, Leap supports a flexible regime that allows a customer to grant consent in a variety of ways and through multiple channels. Carriers should be able to obtain customer consents outside the act of signing a service contract. An express consent should also be broad enough to cover the use of such data by a third party service provider.¹³ Leap also supports the idea of an “implied consent” that arises when a customer avails herself of a specific service that necessarily involves the dissemination of location information. For example, the customer who logs onto MapQuest for driving directions cannot then complain that her location information was divulged.¹⁴

¹² Under this circumstance, Leap believes that this collection activity should be permissible so long as that information is not used or distributed without customer consent.

¹³ See discussion under Security and Integrity, *infra*.

¹⁴ The Commission may wish to explore the scope of such implied consent in any rulemaking proceeding, but under no such circumstances should carriers be held liable for the third party’s use of that information.

A final issue arises in connection with the scope and limitations of explicit customer consent. For example, how specific must a customer's consent be to opt into a location-service plan, and how does the scope of that consent evolve with the scope of the services that are provided? Leap supports a consumer's ability to provide a blanket consent covering a variety of uses of location information. Under such a framework, a consumer could obtain a complete menu of wireless location services while maintaining the ability to "opt-out" of any unsuitable offering. Such a framework could also be more cost-efficient for service providers who presumably would not have to obtain a new consent for each individual offering they add to their location-services package.

The Commission should provide sufficient flexibility in the manner by which a customer may grant consent, including by oral or electronic means. The Commission should not interfere with the ability of customers to obtain the services they want, by imposing inflexible and unwieldy mechanisms of consent.

III. SECURITY AND INTEGRITY

CTIA proposes that location service providers maintain location information in a secure manner and that third parties adhere to the provider's location information practices.¹⁵ Leap is concerned with any suggestion that providers must ensure that third parties adhere to the provider's information practices. This assertion gives carriers responsibility over matters wholly outside their control. Providers such as Leap may not be in a position to dictate third party practices, nor can they adequately police third party behavior in a manner which would make such an assurance meaningful. Leap believes that a carrier's obligation should be limited to obtaining customer consent to the use or disclosure of location data.

¹⁵ *Petition* at 10.

IV. TECHNOLOGY NEUTRAL PRINCIPLES

CTIA proposes that privacy expectations for location based services be technologically neutral.¹⁶ Leap supports this principle. Likewise, any privacy principles applicable to wireless carriers should apply to other location based service providers.

V. CONCLUSION

The technology that now permits carriers to offer services based on wireless location information is a beneficial development for the wireless consumer. Leap believes that any privacy regulation of location-based services should ensure the flexibility of each carrier to provide the optimal blend of privacy and personalized services demanded by its customers.

Respectfully Submitted,

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¹⁶ *Petition* at 11.